

PR#9833

THOMPSON, STEVE

4/7/2009

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,  
Plaintiff,

vs.

CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,  
Defendants.

VIDEOTAPED DEPOSITION OF STEVE THOMPSON  
TAKEN ON BEHALF OF THE DEFENDANTS  
ON APRIL 7, 2009, BEGINNING AT 9:30 A.M.  
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:

J. Trevor Hammons  
OKLAHOMA ATTORNEY GENERAL'S OFFICE  
313 Northeast 21st  
Oklahoma City, Oklahoma 73105  
(405) 522-2801  
thammons@oag.state.ok.us

On behalf of the PLAINTIFFS:

Martha Penisten  
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY  
707 North Robinson  
Oklahoma City, Oklahoma 73107  
(405) 702-7184

On behalf of the DEFENDANT-PETERSON FARMS, INC.:

Scott McDaniel  
MCDANIEL, HIXON, LONGWELL & ACORD  
320 South Boston, Suite 700  
Tulsa, Oklahoma 74103  
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REPORTED BY: Laura L. Robinson, CSR, RPR

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(APPEARANCES CONTINUED)

On behalf of the DEFENDANT-GEORGE'S, INC. AND GEORGE'S  
FARMS, INC.:

Jennifer Lloyd

THE BASSETT LAW FIRM

221 North College Avenue

Fayetteville, Arkansas 72702

479-521-9996

ALSO PRESENT: Stephen Carns, Videographer

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1 THE VIDEOGRAPHER: This is the videotape  
2 deposition of Steve Thompson in the matter of the  
3 State of Oklahoma versus Tyson Foods, Case Number  
4 is 05-CV-0329 GKF-PJC, being held at 707 North  
5 Robinson, Oklahoma City, Oklahoma, on the 7th of  
6 April, 2009, on record at 9:39 a.m. Counsel please  
7 state your appearance for the record.

8 MR. HAMMONS: Trevor Hammons for the State  
9 of Oklahoma.

10 MS. PENISTEN: Martha Penisten for DEQ.

11 MS. LLOYD: Jennifer Lloyd for George's,  
12 Inc.

13 MR. MCDANIEL: Scott McDaniel for Peterson  
14 Farms, Inc.

15 WHEREUPON,

16 STEVE THOMPSON,  
17 after having been first duly sworn, deposes and says  
18 in reply to the questions propounded as follows,  
19 to-wit:

20 DIRECT EXAMINATION

21 BY MR. MCDANIEL:

22 Q. Good morning, sir.

23 A. Good morning.

24 Q. Would you state your full name for the  
25 record, please.

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1 Q. Can you direct me to those statutes?

2 A. No, I can't.

3 Q. Has the Oklahoma Department of Environmental  
4 Quality conducted any natural resource damage  
5 assessment or assessments in the Illinois River  
6 Watershed?

7 A. Not that I'm aware of.

8 Q. The Illinois River Watershed is obviously a  
9 term I will be using a number of times today. I want  
10 to make sure that you and I are on the same page what  
11 that means. Are you generally familiar with the  
12 geographic area known as the Illinois River Watershed?

13 A. I am.

14 Q. Okay, good. Mr. Thompson, I have handed you  
15 what I have marked as Exhibit 1 to your deposition.  
16 Can you tell me what this is?

17 (Defendant's Exhibit 1 marked for  
18 identification)

19 A. It is a provision of the environmental  
20 quality code that generally says that it is unlawful  
21 for persons to cause pollution to waters of the state,  
22 and that if I determine that to be the case, that I  
23 can order people to comply in a way that that ceases.

24 Q. All right. Just for the record purposes,  
25 what I have, Exhibit 1 is the text of title 27-A,

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1 section 2-6-105 of the Oklahoma Statutes. Do you  
2 agree?

3 A. Yes.

4 Q. What are Oklahoma Department of  
5 Environmental Qualities responsibilities under this  
6 statute?

7 A. Well, we have specific statutes that direct  
8 us in our activities, as do other agencies. So we  
9 consider this a fall back position for the state, that  
10 if action is not being taken by other agencies with  
11 more direct statutory responsibility, that we do have  
12 some authority to be the fall back for those kinds of  
13 activities.

14 Q. So you're saying the way this is structured,  
15 Oklahoma Department of Environmental Quality is, in  
16 essence, sort of a back stop to the jurisdiction of  
17 the other Oklahoma agencies that have environmental  
18 responsibilities?

19 A. It can be interpreted that way.

20 Q. Has it been used that way, to your  
21 knowledge?

22 A. Not to my knowledge.

23 Q. And from time to time today, I'm going to  
24 ask you to read things into the record.

25 A. Okay.

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1 Q. And if I could ask you to read this  
2 paragraph B aloud, please.

3 A. "If the executive director finds that any of  
4 the air, land or waters of the state have been or are  
5 being polluted, the executive director shall make an  
6 order requiring such pollution to cease within a  
7 reasonable time, or require such manner of treatments  
8 or disposition of the sewage or other polluting  
9 material that may be in his judgment be necessary to  
10 prevent further pollution. Shall be the duty of the  
11 person to whom such order is directed to fully comply  
12 with the order of the executive director."

13 Q. All right. When it says in subsection B,  
14 "The executive director finds," what is the process  
15 that you or your staff go through in order to reach a  
16 finding?

17 MR. HAMMONS: I will object to the form, to  
18 the extent it calls for a legal conclusion.

19 Q. (BY MR. MCDANIEL) You can go ahead and  
20 answer, sir.

21 A. The process would be that an issue would  
22 come to our attention, the program would evaluate the  
23 problem. Our legal staff would then look at the  
24 statutory authorities, and then they would bring the  
25 issue to me for a decision.

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1 Q. That decision, is that equivalent to a  
2 finding?

3 A. It would be a -- yes, it would be a finding,  
4 and if we found that there was an activity under the  
5 statute that was not being addressed, we could issue  
6 an order.

7 Q. All right. Are all findings that you issue  
8 under this statute, are they in writing?

9 A. Oh, yes.

10 Q. Okay. If the Oklahoma Department of  
11 Environmental Quality becomes aware of unlawful  
12 pollution of the waters of the state, does it have the  
13 duty to undertake this process?

14 A. It has a duty absent action by another  
15 agency, with more specific statutory authority.

16 Q. All right. I'm going to ask you, sir, to  
17 take a moment and look at this deposition notice that  
18 I gave you, and familiarize yourself with the names of  
19 the defendants. I'm assuming you don't have them  
20 committed to memory.

21 A. I do not.

22 Q. There is one name on here, it is Aviagen,  
23 Inc. that was originally in the case style, and they  
24 are no longer a defendant in the case, so I'm putting  
25 a line through that. Would you take a moment and look

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1 at the names of all of the remaining defendants?

2 A. Okay.

3 Q. All right, sir. Have you as executive  
4 director of Oklahoma Department of Environmental  
5 Quality made a finding that any one of the companies  
6 listed as defendants on that notice has caused  
7 pollution of the waters of the state in the Illinois  
8 River Watershed?

9 MR. HAMMONS: And I would object to the  
10 form.

11 THE WITNESS: The answer to your question is  
12 that if -- I don't have the records at hand, but if  
13 during -- these companies are also in the business of  
14 food processing, and that is under our direct  
15 jurisdiction.

16 And so it may be that under our  
17 jurisdictions for food processing, we may have found,  
18 had a finding and may have issued an order. But I  
19 don't specifically -- I don't specifically recall  
20 that. But I'm not at a point where I can say  
21 conclusively one way or the other whether that's the  
22 case or not.

23 Q. All right. And if that were the case, are  
24 you referring to, sir, potentially to a situation that  
25 would involve a point source discharge associated with



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1 a food processing facility?

2 A. It could be. It could be related to a point  
3 source water discharge, it could be related to air  
4 quality issues, it could be related to the improper  
5 disposal of process waste. It could be any number of  
6 those things.

7 Again, I don't have a independent  
8 recollection of having done so, but it could have  
9 happened.

10 Q. All right. You know this case, this lawsuit  
11 involves allegations relating to the manner in which  
12 poultry litter or some may say poultry waste has been  
13 handled or utilized within the Illinois River  
14 Watershed. Do you understand that to be the case?

15 A. I do.

16 Q. All right. That's the context for my  
17 question.

18 A. Okay.

19 Q. So let me re-ask the question, if you don't  
20 mind.

21 A. Okay.

22 Q. Have you as executive director of Oklahoma  
23 Department of Environmental Quality made a finding  
24 that any one of these companies listed as the  
25 defendant in this case has caused pollution of the

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1 waters of the state of Oklahoma in the Illinois River  
2 Watershed by virtue of management or utilization of  
3 poultry litter or poultry waste?

4 A. I have not.

5 MR. HAMMONS: Object to the form.

6 THE WITNESS: Sorry.

7 MR. HAMMONS: I'm sorry, I object to the  
8 form. You can answer.

9 Q. (BY MR. MCDANIEL) I'm sorry, sir, would you  
10 just repeat your answer so the video --

11 A. I have not.

12 Q. Now, the same context, sir, have you as  
13 executive director made a finding that any poultry  
14 grower operating under a contract with any one of the  
15 companies that's listed as a defendant in this case  
16 has caused pollution to the waters of the state of  
17 Oklahoma in the Illinois River Watershed?

18 MR. HAMMONS: Object to the form.

19 THE WITNESS: Again, in the context of --  
20 let me be clear. If a poultry grower has a violation  
21 under our direct statutory responsibility, we could  
22 have. For instance, if they had a septic tank that  
23 was malfunctioning.

24 But in the context of the lawsuit, the  
25 answer to your question is no, I have not.

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1 growers?

2 A. Not to my knowledge.

3 Q. In response to this purported notice, did  
4 ODEQ initiate any enforcement action against these  
5 poultry companies or any of their contract growers?

6 A. No.

7 Q. Has Oklahoma Department of Environmental  
8 Quality made a finding that any of the defendants in  
9 this lawsuit have violated the Solid Waste Disposal  
10 Act?

11 MR. HAMMONS: Object to the form. Calls for  
12 a legal conclusion.

13 THE WITNESS: Again, in the context that we  
14 are talking about, no.

15 Q. (BY MR. MCDANIEL) Okay. And to use your  
16 words, in the context of these allegations contained  
17 in this purported notice of intent to file a citizen's  
18 suit, has Oklahoma Department of Environmental Quality  
19 made a finding that any poultry grower under contract  
20 with any of the defendants in this lawsuit has  
21 violated the Solid Waste Disposal Act?

22 MR. HAMMONS: Object to the form.

23 THE WITNESS: No.

24 Q. (BY MR. MCDANIEL) Has the Oklahoma  
25 Department of Environmental Quality made a finding

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1           A.     Yes.

2           Q.     And I would ask you to look at subsection C  
3     and tell me if you agree that as a matter of Oklahoma  
4     law poultry manure and bedding is not a hazardous  
5     substance as that term is defined under Oklahoma law?

6           MR. HAMMONS: Object to the form.

7           THE WITNESS: I agree.

8           Q.     (BY MR. MCDANIEL) It is also not a  
9     hazardous waste as that term is defined in Oklahoma  
10    law?

11          MR. HAMMONS: Object to the form.

12          THE WITNESS: I agree.

13          Q.     (BY MR. MCDANIEL) Has the Oklahoma  
14    Department of Environmental Quality made a finding  
15    that in the context of land applying poultry waste on  
16    agricultural lands that poultry waste is a CERCLA  
17    hazardous substance?

18          MR. HAMMONS: Object to the form.

19          THE WITNESS: We have not.

20          Q.     (BY MR. MCDANIEL) Has Oklahoma Department  
21    of Environmental Quality made a finding that the use  
22    of poultry waste on agricultural lands in the Illinois  
23    River Watershed is threatening the release of any  
24    hazardous substance?

25          MR. HAMMONS: Object to the form.

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1 THE WITNESS: No.

2 Q. (BY MR. MCDANIEL) Has Oklahoma Department  
3 of Environmental Quality made a finding that the use  
4 of poultry waste on lands in the Illinois River  
5 Watershed is or has released hazardous substances?

6 MR. HAMMONS: Object to the form.

7 THE WITNESS: No.

8 Q. (BY MR. MCDANIEL) In the context of CERCLA,  
9 are you familiar with the term potentially responsible  
10 party?

11 A. Yes.

12 Q. Tell me generally what that means.

13 A. That means that those folks that have  
14 previously had ownership or stating really ownership,  
15 have had something to do with the site potentially or  
16 are responsible for the clean-up of that site.

17 Q. Okay. And it comes from section 107-A of  
18 CERCLA, does that sound right?

19 A. If you say so.

20 Q. Okay. Now, within the context of CERCLA,  
21 has the Oklahoma Department of Environmental Quality  
22 determined that any of the defendants in this lawsuit  
23 are PRPs or potentially responsible parties under  
24 CERCLA?

25 MR. HAMMONS: Object to the form.